



General Assembly

January Session, 2009

**Committee Bill No. 249**

LCO No. 4177

\*04177SB00249CE\_\*

Referred to Committee on Commerce

Introduced by:  
(CE)

***AN ACT CONCERNING THE FILM PRODUCTION TAX CREDIT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. Section 12-217jj of the general statutes is repealed and the  
2       following is substituted in lieu thereof (*Effective July 1, 2009, and*  
3       *applicable to income years commencing on and after January 1, 2009*):

4       (a) As used in this section:

5       (1) "Commissioner" means the Commissioner of Revenue Services.

6       (2) "Commission" means the Connecticut Commission on Culture  
7       and Tourism.

8       (3) (A) "Qualified production" means entertainment content created  
9       in whole or in part within the state, including motion pictures;  
10       documentaries; long-form, specials, mini-series, series, sound  
11       recordings, videos and music videos and interstitials television  
12       programming; interactive television; interactive games; videogames;  
13       commercials; infomercials; any format of digital media, including an  
14       interactive web site, created for distribution or exhibition to the

15 general public; and any trailer, pilot, video teaser or demo created  
16 primarily to stimulate the sale, marketing, promotion or exploitation of  
17 future investment in either a product or a qualified production via any  
18 means and media in any digital media format, film or videotape,  
19 provided such program meets all the underlying criteria of a qualified  
20 production.

21 (B) "Qualified production" shall not include any ongoing television  
22 program created primarily as news, weather or financial market  
23 reports, a production featuring current events, sporting events, an  
24 awards show or other gala event, a production whose sole purpose is  
25 fundraising, a long-form production that primarily markets a product  
26 or service, a production used for corporate training or in-house  
27 corporate advertising or other similar productions, or any production  
28 for which records are required to be maintained under 18 USC 2257  
29 with respect to sexually explicit content.

30 (4) "Eligible production company" means a corporation, partnership,  
31 limited liability company, or other business entity engaged in the  
32 business of producing qualified productions on a one-time or ongoing  
33 basis, [and] qualified by the Secretary of the State to engage in business  
34 in the state, and that conducts at least fifty per cent of its total  
35 production in studios located in Connecticut.

36 (5) "Production expenses or costs" means all expenditures clearly  
37 and demonstrably incurred in the state in the development,  
38 preproduction, production or postproduction costs of a qualified  
39 production, including:

40 (A) Expenditures incurred in the state in the form of either  
41 compensation or purchases including production work, production  
42 equipment not eligible for the infrastructure tax credit provided in  
43 section 12-217kk, production software, postproduction work,  
44 postproduction equipment, postproduction software, set design, set  
45 construction, props, lighting, wardrobe, makeup, makeup accessories,

46 special effects, visual effects, audio effects, film processing, music,  
47 sound mixing, editing, location fees, soundstages and any and all other  
48 costs or services directly incurred in connection with a state-certified  
49 qualified production;

50 (B) Expenditures for distribution, including preproduction,  
51 production or postproduction costs relating to the creation of trailers,  
52 marketing videos, commercials, point-of-purchase videos and any and  
53 all content created on film or digital media, including the duplication  
54 of films, videos, CDs, DVDs and any and all digital files now in  
55 existence and those yet to be created for mass consumer consumption;  
56 the purchase, by a company in the state, of any and all equipment  
57 relating to the duplication or mass market distribution of any content  
58 created or produced in the state by any digital media format which is  
59 now in use and those formats yet to be created for mass consumer  
60 consumption; and

61 (C) "Production expenses or costs" does not include the following:  
62 (i) On and after January 1, 2008, compensation in excess of fifteen  
63 million dollars paid to any individual or entity representing an  
64 individual, for services provided in the production of a qualified  
65 production; (ii) media buys, promotional events or gifts or public  
66 relations associated with the promotion or marketing of any qualified  
67 production; (iii) deferred, leveraged or profit participation costs  
68 relating to any and all personnel associated with any and all aspects of  
69 the production, including, but not limited to, producer fees, director  
70 fees, talent fees and writer fees; (iv) costs relating to the transfer of the  
71 production tax credits; and (v) any amounts paid to persons or  
72 businesses as a result of their participation in profits from the  
73 exploitation of the qualified production.

74 (6) "Sound recording" means a recording of music, poetry or  
75 spoken-word performance, but does not include the audio portions of  
76 dialogue or words spoken and recorded as part of a motion picture,  
77 video, theatrical production, television news coverage or athletic event.

78 (7) "State-certified qualified production" means a qualified  
79 production produced by an eligible production company that (A) is in  
80 compliance with regulations adopted pursuant to subsection (g) of this  
81 section, (B) is authorized to conduct business in this state, and (C) has  
82 been approved by the commission as qualifying for a production tax  
83 credit under this section.

84 (8) "Interactive web site" means a web site, the production costs of  
85 which (A) exceed five hundred thousand dollars per income year, and  
86 (B) is primarily (i) interactive games or end user applications, or (ii)  
87 animation, simulation, sound, graphics, story lines or video created or  
88 repurposed for distribution over the Internet. An interactive web site  
89 does not include a web site primarily used for institutional, private,  
90 industrial, retail or wholesale marketing or promotional purposes, or  
91 which contains obscene content.

92 (9) "Post-certification remedy" means the recapture, disallowance,  
93 recovery, reduction, repayment, forfeiture, decertification or any other  
94 remedy that would have the effect of reducing or otherwise limiting  
95 the use of a tax credit provided by this section.

96 (b) (1) The Connecticut Commission on Culture and Tourism shall  
97 administer a system of tax credit vouchers within the resources,  
98 requirements and purposes of this section for eligible production  
99 companies producing a state-certified qualified production in the state.  
100 For income years commencing on or after January 1, 2006, any eligible  
101 production company incurring production expenses or costs in excess  
102 of fifty thousand dollars shall be eligible for a credit against the tax  
103 imposed under chapter 207 or this chapter equal to thirty per cent of  
104 such production expenses or costs, provided (A) on and after January  
105 1, 2009, fifty per cent of such expenses or costs shall be counted toward  
106 such credit when incurred outside the state and used within the state,  
107 and one hundred per cent of such expenses or costs shall be counted  
108 toward such credit when incurred within the state and used within the  
109 state, and (B) on and after January 1, 2012, no expenses or costs

110 incurred outside the state and used within the state shall be eligible for  
111 a credit, and one hundred per cent of such expenses or costs shall be  
112 counted toward such credit when incurred within the state and used  
113 within the state.

114 (2) On and after July 1, 2006, and for income years commencing on  
115 or after January 1, 2006, any credit allowed pursuant to this subsection  
116 may be sold, assigned or otherwise transferred, in whole or in part, to  
117 one or more taxpayers, provided no credit, after issuance, may be sold,  
118 assigned or otherwise transferred, in whole or in part, more than three  
119 times.

120 (3) On and after July 1, 2006, and for income years commencing on  
121 or after January 1, 2006, any such credit allowed under this subsection  
122 shall be claimed against the tax imposed under chapter 207 or this  
123 chapter for the income year in which the production expenses or costs  
124 were incurred, and may be carried forward for the three immediately  
125 succeeding income years. Any production tax credit allowed under  
126 this subsection shall be nonrefundable.

127 (c) (1) An eligible production company shall apply to the  
128 commission for a tax credit voucher on an annual basis, but not later  
129 than ninety days after the first production expenses or costs are  
130 incurred in the production of a qualified production, and shall provide  
131 with such application such information as the commission may require  
132 to determine such company's eligibility to claim a credit under this  
133 section. No production expenses or costs may be listed more than once  
134 for purposes of the tax credit voucher pursuant to this section, or  
135 pursuant to section 12-217kk or 12-217ll, and if a production expense  
136 or cost has been included in a claim for a credit, such production  
137 expense or cost may not be included in any subsequent claim for a  
138 credit.

139 (2) Not earlier than three months after the application in subdivision  
140 (1) of this subsection, an eligible production company may apply to the

141 commission for a production tax credit voucher, and shall provide  
142 with such application such information and independent certification  
143 as the commission may require pertaining to the amount of such  
144 company's production expenses or costs to date. If the commission  
145 determines that such company is eligible to be issued a production tax  
146 credit voucher, the commission shall enter on the voucher the amount  
147 of production expenses or costs that has been established to the  
148 satisfaction of the commission, and the amount of such company's  
149 credit under this section. The commission shall provide a copy of such  
150 voucher to the commissioner, upon request.

151 (3) Not later than ninety days after the end of the annual period, or  
152 after the last production expenses or costs are incurred in the  
153 production of a qualified production, an eligible production company  
154 shall apply to the commission for a production tax credit voucher, and  
155 shall provide with such application such information and independent  
156 certification as the commission may require pertaining to the amount  
157 of such company's production expenses or costs. If the commission  
158 determines that such company is eligible to be issued a production tax  
159 credit voucher, the commission shall enter on the voucher the amount  
160 of production expenses or costs that has been established to the  
161 satisfaction of the commission, minus the amount of any credit issued  
162 pursuant to subdivision (2) of this subsection, and the amount of such  
163 company's credit under this section. The commission shall provide a  
164 copy of such voucher to the commissioner, upon request.

165 (d) If an eligible production company sells, assigns or otherwise  
166 transfers a credit under this section to another taxpayer, the transferor  
167 and transferee shall jointly submit written notification of such transfer  
168 to the commission not later than thirty days after such transfer. If such  
169 transferee sells, assigns or otherwise transfers a credit under this  
170 section to a subsequent transferee, such transferee and such  
171 subsequent transferee shall jointly submit written notification of such  
172 transfer to the commission not later than thirty days after such  
173 transfer. The notification after each transfer shall include the credit

174 voucher number, the date of transfer, the amount of such credit  
175 transferred, the tax credit balance before and after the transfer, the tax  
176 identification numbers for both the transferor and the transferee, and  
177 any other information required by the commission. Failure to comply  
178 with this subsection will result in a disallowance of the tax credit until  
179 there is full compliance on the part of the transferor and the transferee,  
180 and for a second or third transfer, on the part of all subsequent  
181 transferors and transferees. The commission shall provide a copy of  
182 the notification of assignment to the commissioner upon request.

183 (e) Any eligible production company that wilfully submits  
184 information to the commission that it knows to be fraudulent or false  
185 shall, in addition to any other penalties provided by law, be liable for a  
186 penalty equal to the amount of such company's credit entered on the  
187 production tax credit certificate issued under this section.

188 (f) The issuance by the commission of a tax credit voucher with  
189 respect to an amount of tax credits stated thereon shall mean that none  
190 of such tax credits are subject to a post-certification remedy, and that  
191 the commission and the commissioner shall have no right, except in  
192 the case of possible material misrepresentation or fraud, to conduct  
193 any further or additional review, examination or audit of the  
194 expenditures or costs for which such tax credits were issued. If at any  
195 time after the issuance of a tax credit voucher the commission or the  
196 commissioner determines that there was a material misrepresentation  
197 or fraud on the part of an eligible production company in connection  
198 with the submission of an expense report and the result of such  
199 material misrepresentation or fraud was that (1) a specific amount of  
200 tax credits was reflected on the tax credit voucher issued in response to  
201 such expense report that would not have otherwise been so reflected,  
202 and (2) such tax credits would otherwise be subject to a post-  
203 certification remedy, such tax credits shall not be subject to any post-  
204 certification remedy and the sole and exclusive remedy of the  
205 commission and the commissioner shall be to seek collection of the  
206 amount of such tax credits from the eligible production company that

207 committed the fraud or misrepresentation, not from any transferee of  
208 such tax credits.

209 (g) The commission, in consultation with the commissioner, shall  
210 adopt regulations, in accordance with the provisions of chapter 54, as  
211 may be necessary for the administration of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009, and applicable to income years commencing on and after January 1, 2009</i>	12-217jj

***Statement of Purpose:***

To obtain greater benefits for the state from the film production tax credit program.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: SEN. LEBEAU, 3rd Dist.

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